

Date of Hearing: August 18, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
SB 431 (McGuire) – As Amended July 27, 2020

Policy Committee: Communications and Conveyance Vote: 9 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill requires the California Public Utilities Commission (CPUC) to develop and implement backup power rules for telecommunication services in areas the CPUC has determined to be at high risk of wildfire.

Specifically, this bill:

- 1) Requires the CPUC, on or before January 1, 2010, in consultation with the Office of Emergency Services (OES) and the telecommunications industry, to develop and implement backup power rules for telecommunications services in a commission-designated Tier 2 or Tier 3 High Fire Threat District.
- 2) Specifies the CPUC rules, for mobile telephone services (also known as “wireless” services), are to require the provision of backup power where feasible to maintain minimum service for at least 72 hours, which may be achieved using best practices.
- 3) Specifies the CPUC rules, for telecommunication services other than mobile services (in other words, wireline telecommunications services), are to require the provision of backup power where feasible to maintain minimum service for at least 72 hours, for a defined list of facility types.
- 4) Requires mobile service providers, upon notification by a utility of a deenergization event, to notify its customers that access to 911 and emergency notifications may be affected.
- 5) Requires a provider of Voice Over Internet Protocol (VOIP) to affix to a customer’s device notice that access to 911 emergency services and emergency notifications may be affected by a deenergization event and inform customers of the same, at least annually.
- 6) Directs the CPUC to provide a process that allows a telecommunications provider to identify facilities for which it is unnecessary, infeasible, inadvisable or impossible to comply with the 72-hour backup power rule for specified reasons and authorizes the CPUC to waive the backup requirement under certain circumstances.

FISCAL EFFECT:

- 1) Annual costs of approximately \$450,000 (special fund) for three positions to conduct a rulemaking to consider feasibility and current best practices and to define “best practices” for purposes of implementing backup power requirements, to monitor and verify compliance

with the bill's backup power and customer notice requirements, and to establish and administer the bill's process for waiver from backup power requirements.

- 2) Annual costs of approximately \$40,000 (special fund) to acquire and maintain software, licensing and training to allow geographic information system (GIS) analysis associated with back-up power and resiliency requirements.
- 3) The bill established backup power requirements applicable to wireline service providers, whereas the CPUC is in the process of developing such rules. As a result, the CPUC contends the bill will result in additional legal work as it attempts to implement the bill's requirements through its rules development. Therefore, the bill will result in one-time costs during the two years following enactment as CPUC staff conducts legal research, review and analysis in support of the CPUC's rulemaking process. These cost will likely range from around \$100,000 to \$200,000 (special fund) over the course of two years.

In addition, the CPUC anticipates industry will challenge its authority to adopt backup power rules in addition to or complementary of the requirements in this bill. Therefore the CPUC asserts it will entail additional costs to represent itself in court. Such legal costs are a possibility; industry might challenge the CPUC's authority to further regulate backup power (though this analysis recognizes the CPUC's generally broad authority over telecommunications services). However, this bill does not directly result in such a legal challenge. Nor is legal challenge certain. Therefore, this analysis does not include such costs in its estimate of the costs of this bill.

COMMENTS:

- 1) **Purpose.** According to the author:

During last year's power outage debacle, nearly two million Northern California residents had their landline, cell phone, and cable service interrupted. Our phones are our lifelines. It's how we keep in touch with the rest of the world and how we receive emergency alerts. Telecom representatives assured us this worst case scenario, hundreds of cell towers and landlines going down due to the lack of power, wouldn't happen. It's simply not true. It's time California steps up and mandates backup power. This bill isn't about checking your Facebook status. It's about life and death.

- 2) **Background.** California's telecommunications services primarily are of three types: traditional wireline service, where the customer is connect by wires—usually copper—to a service provider's hub; wireless service, where mobile devices are connected wirelessly to network or cellular towers and other fixed facilities; and internet-enabled services, which use an internet connection to transmit and receive call data. All three types of telecommunications services are vulnerable to widespread disasters, including California's unfortunately large and frequent wildfires. The state's response to the threat of wildfire similarly threatens telecommunications services. This became all too apparent when, in October 2019, hundreds of thousands of wireline and wireless customers lost service during "public safety power shutoffs" (PSPSs)—intentional utility-controlled deenergizing events intended to prevent electrical infrastructure from sparking a conflagration during high fire risk conditions.

Early in 2019, the CPUC opened a proceeding to consider whether and how to require telecommunication service providers to supply backup power at key facilities. As a result of that work, the CPUC, just last month, adopted a decision—Decision D.20-07-011—that requires wireless telecommunications service providers to develop resiliency plans that, in general, provide backup power to ensure service during a disaster in the state’s most fire-prone areas (areas designated by the CPUC as “Tier 2” and “Tier 3”). This bill, in regards to wireless service, very closely mirrors the CPUC decision, though there are some differences. But, it is accurate to say, in regards to wireless service, the CPUC’s decision achieves nearly everything this bill seeks to achieve.

In regards to wireline service, the bill anticipates the results of CPUC’s rulemaking. On July 22 of this year, the CPUC issued a ruling that seeks stakeholder input regarding backup power rules applicable to wireline service. In contrast, this bill requires wireline service providers to ensure backup power, where feasible, to maintain minimum wireline service for at least 72 hours for specified classes of customers, including fire stations, police stations and hospitals. This analysis assumes the CPUC, acting pursuant to authority provided to it by this bill and pursuant to authority given to it by existing law, will need to conduct additional rulemaking to develop, modify and, possibly, expand the bill’s backup power rules for both wireline and wireless telecommunications services.

- 3) **Best Practices.** As noted above, the bill, in several places, mentions “best practices.” Specifically, the bill requires wireless service providers to ensure backup power where feasible to maintain minimum service for at least 72 hours, which the bill says may be achieved using best practices. Similarly, the bill directs the CPUC, in developing and implementing backup power rules applicable to both wireline and wireless services, to consider current best practices and the feasibility of the rules. The bill does not define best practices. The author’s office states the lack of definition is intentional to allow the CPUC as much flexibility as it needs to implement the requirements of the bill.

This flexibility is helpful. However, it may also be helpful to give the CPUC, and industry, some guidance in how they are to interpret “best practices” for providing backup power. This is especially true since the CPUC and industry have been at odds over what constitutes best practices, with the CPUC arguing for renewable energy to provide backup power, in the long run. In contrast, some industry representatives contend renewable energy as a backup power source is “infeasible” and “not reliable” and that “diesel remains the primary fuel resource because there are no existing clean energy solutions,” despite, according to the CPUC, some telecommunications service providers already using renewable energy sources as backup power. (See CPUC Decision D.20-07-011.)

In any case, what constitutes “best practices” is contested. In developing and implementing backup power rules, it will be important the CPUC considers the state’s existing laws and policies regarding the environment, clean energy and public health and safety.

- 4) **Industry Concerns.** The bill is opposed by the telecommunications industry in general, as represented by the opposition of CTIA (“the wireless association”) and the California Cable and Television Association (CCTA). Industry generally contends the bill fails to (a) recognize ongoing industry efforts and (b) provide needed flexibility merited by unique design characteristics of different telecommunications networks. In addition, industry objects to the bill’s waiver process, whereby it must demonstrate to the CPUC, on a case-by-

case basis, why the bill's backup power rules are impractical, unnecessary or infeasible. Industry also protests the requirement that the telecommunications industry notify customers if service "may" be affected by a qualifying event, which industry sees as overly broad and likely to result in excessive notification.

The telecommunications industry does not embrace the CPUC's adopted decision regarding backup power. However, some industry representatives indicate the CPUC, more-or-less, "got it right" and object to what industry sees as conflicts between the bill and the CPUC regulation, which, they contend, will result in confusion and additional regulatory cost and delay.

In the Assembly Communications and Conveyance hearing on this bill, the author, in response to the requests of some committee members, committed to "continue to work" with opponents to the bill. However, the author did not commit to make any specific changes, or any changes at all, to the bill.

Analysis Prepared by: Jay Dickenson / APPR. / (916) 319-2081